SOCIAL SECURITY

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Ms. Cynthia L. Johnson
Director
Cash Management Policy and Planning Division
Financial Management Service
Liberty Center Building, Room 420
401 14th Street, SW
Washington, D.C. 20227

Dear Ms. Johnson:

The Social Security Administration (SSA) is pleased to comment on the Financial Management Service's (FMS') proposed change in regulations regarding the Federal Government's use of the national automated clearinghouse (ACH) system. This action is welcome because of the strategic importance of electronic funds transfer technology to the Government and because of the Government's profound impact on the ACH system. Our detailed comments are included in the enclosed material. In addition, we have the following general comments.

For a number of years, SSA has advocated that the Federal Government, to the greatest extent possible, should abide by the *ACH Operating Rules* published by the National Automated Clearing House Association (NACHA). In most circumstances, the Government and private sector can operate from the same set of rules. Further, sharing common procedures ensures there is an ongoing dialogue between the Government and financial community as new rules are developed. Of course, the Federal Government does have a unique public trust responsibility which does, from time to time, require it to establish separate rules and procedures regarding its use of the ACH. We are pleased that FMS is adopting this concept in its proposed rules.

As indicated in the enclosed comments, we are concerned about the proposed method of the Federal Government adopting changes to the *ACH Operating Rules* that occur after 1997. Specifically, we do not agree with the idea of routinely publishing a notice to accept new *Rules* changes. Instead, we recommend adopting a policy used by the Federal Reserve System. That agency automatically assumes that new *Rules* changes will be adopted except when a public trust responsibility requires it to take another course of action. This approach, if followed by FMS, offers distinct advantages to both Federal agencies and the financial community with regard to implementation planning. We urge FMS to adopt an approach similar to Federal Reserve's when considering subsequent changes in the *ACH Operating Rules.*

ACH # 001

SSA commends FMS on its proposed requirement regarding verification of prenotification entries generated by (or on behalf of) Federal agencies. We recognize the controversial nature of this proposal. Nonetheless, this change represents appropriate public policy and should be adopted. As indicated in the enclosed material, SSA is willing to work with FMS and the financial community to mitigate to the greatest extent possible any burden associated with the new rule. SSA believes a reasonable solution is to include the recipient's own Social Security number (SSN) as the second universal identifier in all Government prenotification entries. It can be included in an addenda record associated with the transaction. In any event, SSA interprets the proposed rule to require receiving financial institutions to undertake a substantive review of prenotification entries generated by Federal agencies to ensure subsequent payments are credited to the account of the intended individual. If a receiving financial institution fails to do this, SSA expects FMS to hold it liable for any subsequent losses that may occur.

SSA agrees with the exception regarding the limitations on liability. The proposal to limit liability to the amount of the transaction in question for both Federal agencies and the financial institution seems appropriate and reasonable. It is also similar to a longstanding policy established by the Federal Reserve System.

FMS invited comments on the prospect of developing some form of automated reclamation to replace the current paper process. Although SSA believes the idea should be explored, no new process should be developed unless a convincing business case can be made to justify it. In 1993, SSA sponsored the death notification entry standard which significantly reduced the number of reclamation requests produced by this Agency. In 1997, SSA introduced payment cycling. Cycling is also causing a significant reduction in the remaining reclamations because the Agency has additional time to receive and act on reports of beneficiaries' deaths. Over time, the new Social Security payment schedule will have even a greater impact. In our opinion, these enhancements reduce the need for a future electronic reclamation process.

Finally, SSA would like to comment on a concept it has been discussing lately with the financial community called "consumer EDI." Based on the success of the death notification entry process, automated enrollment service, prenotification process, etc., SSA is convinced that payment-related information should be considered as important as any payments delivered through the ACH. It is, therefore, important that the financial community prepare itself to accommodate program information sent along with Government ACH transactions.

SSA is aware that NACHA has formed a workgroup to consider a change in its *Rules* governing how addenda information received from the Government must be treated. This Agency is prepared to work with NACHA and the financial community to develop rules that meet the needs of all parties. However, it may be necessary for FMS to modify part §210.2 (d) by publishing an additional exception to the acceptability of the *ACH Operating Rules*. Stated another way, it may be appropriate for the Federal Government to specify through regulations how consumer addenda information will be treated.

We wish to commend FMS for the fine job it did in preparing these important rules changes. Questions regarding these comments may be directed to Michael Johnson at (410) 965-2863.

Sincerely,

Thomas G. Staples
Associate Commissioner
for Financial Policy and Operations

Enclosure

Comments of the Social Security Administration
on the Financial Management Service's Proposed Rules
Title 31, Code of Federal Regulations, Part 210
"Federal Government Participation in the Automated Clearing House"

The Social Security Administration (SSA) is pleased to offer the following comments on the Financial Management Service's (FMS') proposed rules regarding the Federal Government's participation in the national automated clearinghouse (ACH) system:

General

Part III of FMS' material provides a rationale for the proposed rules changes. Included in the explanation are five current *ACH Operating Rules* that FMS proposes to preempt entirely and exclude specifically from the proposed rules definition of "applicable *ACH Operating Rules*." While agreeing with the proposed exceptions, SSA believes that, at some future date, FMS can adhere to the *ACH Operating Rules* requirement regarding the timing of origination.

At present, originating depository financial institutions (ODFIs) may not introduce credit entries into the ACH prior to 2 banking days before the designated settlement date. FMS proposes to exempt the Federal Government from this limitation. While there are operational reasons that make this is necessary for now, there is no reason the Government cannot adhere to this particular *ACH Operating Rules* requirement eventually. In fact, it would be to the benefit of Federal agencies and FMS to do so. Achieving the 2-banking day window would allow agencies more time to process reports that affect continuing payment entitlement and payment amounts.

§ 210.2 - Definitions

The definition associated with "applicable ACH rules" included in §210.2 (d) may need to be modified to accommodate SSA's comments included below.

§ 210.3 (2) - Governing Law

SSA is concerned with the description of how subsequent revisions to the *ACH Operating Rules* will be accepted by the Federal Government. As written, this section would require FMS to publish in the Federal Register a notice agreeing to accept proposed changes to the *ACH Operating Rules* each time they occur. Today, this means FMS would have to publish notices at least twice a year. SSA believes this is burdensome, unnecessary and, over time, may result in problems or delays for Federal agencies wanting to take immediate advantage of enhancements in the ACH system.

As indicated in this Agency's comments to the 1994 Notice of Proposed Rulemaking, SSA believes FMS should adopt the approach used by the Federal Reserve System. Federal Reserve works from a premise that it will automatically accept proposed *ACH Operating Rules* changes except when the change conflicts with Federal Reserve's responsibilities. If a conflict occurs,

that agency publishes a notice in its operating circulars holding itself harmless from the designated *ACH Operating Rules* change. FMS should adopt the same strategy.

The ramifications of not following the Federal Reserve model are already evident. The National Automated Clearing House Association (NACHA) has recently approved a series of *Rules* changes with effective dates falling after September 1997 that will affect Federal agencies. These include modifications to the definition of the R14 and R15 return reason codes, a reduction in the time allowed to produce notifications of change and a modification to the use of the automated enrollment standard. All of these changes have significant potential ramifications for SSA and other Federal agencies. At the same time, they are not controversial and have been developed in cooperation with the Federal community. Under the proposed rule, it would be unclear to SSA and the financial community as to whether these changes apply to Federal agencies until FMS publishes a notice of acceptance. Such uncertainty poses major planning problems for all affected parties.

§ 210.4 (c) (3) - Authorizations and revocations of authorizations

This subsection must be clarified in light of a recent opinion rendered by FMS regarding the revocation of a direct deposit authorization. Both current regulations and the proposed rule state that "an authorization shall remain valid until it is terminated or revoked" by a "closing of the recipient's account at the RDFI by the recipient." FMS recently issued an opinion that revocation of an authorization apparently cannot take effect unless additional criteria are met. These include the certifying Federal agency effectively acting upon the revocation request, concurrence by the receiving financial institution that closing the account constitutes a revocation, etc. SSA does not agree with this interpretation and asks that the matter be clarified in FMS' final rules.

This issue surfaced in several recent cases. Increasingly, agencies are encountering situations in which their recipients are in dispute with financial institutions to which they owe monies. These same institutions receive the recipients' Federal direct deposit payments. Often the disaffected party will close his/her account and subsequently notify the Federal agency to direct payments elsewhere. When the certifying agency is not able to act upon the request before the next scheduled payment is delivered, however, problems occur. The financial institution may accept subsequent direct deposit credits, reopen the individual's account and debit the account to recover funds owed the financial institution.

SSA believes the action taken by financial institutions to reopen accounts after the individual has closed the account is in clear violation of FMS' current and proposed rules. Further, the only criterion that should apply under Federal rules is whether the recipient has closed the account at the financial institution. This should automatically revoke the direct deposit authorization irrespective of any other considerations. When a recipient can provide proof that an account has been closed, all Federal payments subsequently received by the financial institution must be returned. SSA does not agree that revocations resulting from account closings are conditional and only occur when the originating Federal agency acts on a change in authorizations or

if the revocation does not conflict with the policies of the receiving financial institution. Following this logic, FMS would have no basis for requiring the return of funds in cases where a financial institution has knowledge that a customer is dead (i.e., death being a condition which revokes a direct deposit authorization).

Beneficiaries cannot be adversely affected by the peculiarities of the Federal disbursing process either. Most Federal agencies, including SSA, have no choice at present other than to use FMS as their disbursing agent. This dual agency payment arrangement (i.e., a certifying agency and a separate disbursing agency) necessitates a schedule which includes a monthly cutoff date after which further adjustments to payments are no longer permitted. The monthly cutoff date is an accommodation required by FMS. Accordingly, recipients cannot be prevented from revoking a direct deposit authorization simply because the certifying agency is not able to act upon the request because of its monthly cutoff date. Similarly, FMS must allow recipients to revoke authorizations under conditions set forth in Federal rules irrespective of any local agreements or policies at the financial institution.

In summary, FMS must clarify its proposed rule to allow any recipient to revoke a direct deposit authorization *based on the closing of the recipient's account at the RDFI by the recipient* regardless of the timing of any action taken by the certifying agency or local agreements/policies at the financial institution. If FMS agrees, this section may need to be clarified with regard to what constitutes acceptable proof that the recipient has closed the account.

§ 210.5 (a) - Account Requirements for Benefit Payments

This section should be expanded to provide additional guidance on acceptable account titles. In recent years, there has been a proliferation of electronic delivery services offered to customers of check cashers, consumer funds transfer companies and other alternative financial services entities. It is understood that FMS will not disburse EFT transactions directly to these entities because they are not participants in the national ACH system. SSA concurs with this policy.

To maintain their existing relationship with consumers, alternative financial services entities are entering into business arrangements with financial institutions to provide EFT delivery services to their customers. At present, several hundred thousand Social Security and Supplemental Security Income recipients have chosen to participate in such arrangements. Individual payments are directly deposited into designated accounts at the receiving financial institution. These special accounts have been established under a contractual arrangement between the financial institution and the financial services entity. Program agencies have no way of knowing the account title at the financial institution associated with these arrangements. Further, program agencies cannot be expected to monitor the practices of this industry.

In this section of the proposed rule, it is not clear what is meant by the phrase ". . . such account shall be in the name of the recipient." For example, it is not clear whether receiving financial institutions would be allowed to establish master/subaccounts on their books with limited access by the beneficiary.

Example

John Doe agrees to participate in an EFT delivery arrangement offered by XYZ Financial Services, Inc.. An subaccount number is established at the Steadfast Bank within a block of consumer account numbers set aside for participants in the XYZ Financial Services arrangement. On the books of Steadfast Bank, the subaccount title is listed as "John Doe at XYZ Financial Services, Inc." The Steadfast Bank maintains audit trail information identifying all credits received to this unique subaccount number and all correspondent debit transactions from XYZ Financial Services denoting disbursements to Mr. Doe at its outlets.

It is not clear whether under the proposed rules the EFT delivery arrangement and related account title described in the above example are appropriate. It is also not clear whether the beneficiary can be precluded from withdrawing funds directly from the receiving financial institution under such arrangements.

§ 210.8 (a) - Financial Institutions

SSA is pleased with the proposed change requiring financial institutions to verify at least one other data element in addition to the receiver's account number when reviewing a prenotification entry. This will ensure that subsequent Federal direct deposit payments are credited to the intended party, not just into an account that happens to coincide with a valid account number at the RDFI.

In spite of extraordinary care, mistakes occur in the direct deposit authorization process. Information may be recorded incorrectly on authorization forms. Likewise, mistakes occur in the data keying process. Sometimes depositor account numbers are inadvertently transposed and, by coincidence, happen to conform to a valid account number at the receiving financial institution. Of course, the account is not the one to which the Federal agency intends sending payments. Under current *ACH Operating Rules*, RDFIs need only verify that the DFI account number is a valid number. There is no obligation to ensure that it belongs to the intended party. As a result, public monies are lost when deposits are made to accounts held by persons other than the entitled recipient. At present, SSA loses between $1 and $2 million annually

This Agency recognizes that this proposed requirement is controversial. The financial community will likely question the change for a number of reasons including the perceived lack of a second standard data element for matching purposes, the cost of modifying internal software to allow matching and the related liability accruing to RDFIs that fail to verify the prenote pertains to the intended party. Irrespective of this, ***the proposed requirement represents sound public policy.*** SSA applauds FMS for pursuing this matter.

The financial community's concerns can be mitigated a number of ways. Federal agencies producing prenotification entries can routinely insert the recipient's own Social Security number (SSN) in an addenda record which would be included with the prenotification entry. Because every financial institution must retain customer SSN information for tax identification purposes,

the second common data element for matching purposes is readily available. To further help facilitate automated matching, the Government can solicit the assistance of the Bankers' Electronic Data Interchange (EDI) Council in prescribing an addenda record layout, including the SSN, which is machine readable using EDI protocols. (As an aside, Government agencies should not have a problem including SSNs with prenotification entries given the requirements of the Debt Collection Improvement Act of 1996 to include SSNs with certified payments.)

SSA does not believe the impact of the proposed rule on Government prenotification entries will impose an undue burden on the financial community. Today, smaller financial institutions usually review prenotification entries manually. This will likely continue after FMS' final rule is published. No additional burden accrues to these institutions. Larger financial institutions are affected and will have to make a business decision regarding the new requirement. They will have to balance the limited cost associated with undertaking a one-time update of their internal software against the limited liability losses that may occur if they do not verify a second data element. When considering this, the same financial institutions must also calculate the costs (or avoided costs) associated with an unhappy customer whose Government funds may have been inadvertently deposited into someone else's account.

Ultimately, however, the best argument in support of the proposed requirement is that the Federal Government has an overriding responsibility to make certain that everything possible is done to ensure public funds are disbursed properly. The prenotification verification requirements contained in the current *ACH Operating Rule* are not adequate in meeting the Government's responsibility. For these reasons, SSA urges FMS to retain this needed change when promulgating its final rules.

§ 210. 10 (d) - RDFI liability

SSA concurs with the proposed change in the time limit for agencies to initiate a reclamation. The Agency also agrees with the proposed rule allowing recovery of funds beyond the 6 years prior to the most recent payment when funds are available in the deceased recipient's account.

§ 210.10 (e) - RDFI liability

Consideration should be given to expanding the scope of this section. As written, §210.10 (e) allows the Federal Government to collect erroneous payments by instructing the appropriate Federal Reserve Bank to debit the reserve account utilized by the RDFI. SSA believes this authority should also extend, where necessary, to the recovery of other losses sustained by the Federal Government or by Federal recipients. The first is when the RDFI fails to adhere to the prenotification requirements outlined in proposed §210.8 (a). The second circumstance pertains to losses suffered by Federal recipients when the RDFI incorrectly accepts funds after a direct deposit authorization has been revoked as prescribed in §210.4 (c) (3).

Attachment